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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4975 OF 2005
IN
CRIMINAL APPEAL NO. OF 2005

The State of Maharashtra .. Applicant

V/s.

Shankar Laxman Jadhav .. Respondent

Mr.P.S.Pol-APP-State.
Mr.A.P.Mundargi with D.G. Tangsali for respondent.

CORAM : R.S. MOHITE, J.

DATE : 27TH NOVEMBER, 2007.

P.C. :-

. This is an application filed for leave to appeal against the Judgment and Order dated 9th December, 2004 passed by the Special Judge, Anti-Corruption, Thane, in Special case No.5 of 2002. By the impugned Judgment and Order the trial court has acquitted the accused for the offence punishable under section 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988.

2. I have perused the record. I find that the acquittal is based upon a proper analysis of evidence. The view taken is a possible view. As per the prosecution case, the first demand from the complainant was made by the accused in October, 1999. The accused was the Recovery Officer of Maharashtra State Finance Corporation (MSFC), Nashik. First demand was made at the workshop of the complainant. The demand was made in lieu of settlement of the outstanding loan amount of Rs. 14 lakhs for a lesser amount. The demand was for an amount of Rs.1 lakh. After October, 1999 the accused telephonically demanded the amount of Rs.1 lakh and told him that if he failed to pay Rs.1 lakh, the gala which was mortgaged and which was in the possession of the complainant will be auctioned. Such demands were made from the year 1999 onwards.

3. The complainant admitted in his cross examination that he had not stated about such demands in his complaint. It is further the prosecution case that one more demand was made on 17th June, 2001 at 5.30 p.m. when the accused came to the workshop and informed the complainant that if he did not pay the amount of Rs. 1 lakh, he will pull down the shutter of the gala. The complainant

had admitted that in his complaint, there is no mention about said demand allegedly made on 17.5.2001 at 5.30 p.m. The version given in the complaint was about telephonic demand made on 22.2.2001 at 7.00 p.m. It is further contended that the accused was not the person in position to assure any settlement for return of any amount as a case has already been filed for recovering the dues of the original owner of the gala Sandeep Kulkarni and the complainant.

4. As regards the trap, it is the prosecution case that the decoy witness was asked by the accused to stay outside the house of Sandeep Kulkarni where the money is to be paid. As regards the demand made inside the house of Sandeep Kulkarni the version of the complainant and of Sandeep Kulkarni is found to be at variance. Two cheques of Rs.1,000/- and Rs.15,000/- were to be initially handed over to the accused. Two cheques actually found at the spot in the post trap panchanama were for the amount of Rs.1,000/- and Rs.5,000/-. There is no explanation as to why the cheque of only Rs. 5,000/- was given when the actual amount to be paid by a cheque was Rs.15,000/-. There exists a possibility that one of the cheques, being for a lesser amount, the accused

may have initially accepted some cash amount and after noticing that the cheque amount was short of the actual dues, returned the cash. It is also the prosecution case that the accused accepted the amount and cheques from Mr. Sandeep Kulkarni and counted the amount, anthracene powder was not found on both his hands. If he had actually counted the amount, anthracene powder was required to be found on both of his hands. But it was only found on his right hand. The defence of the accused was that he refused the amount. The actual amount was not found on the person of the accused and it was found at the spot.

5. In my view, this is not a fit case to interfere an appeal against an order of acquittal. Hence, leave refused. Application dismissed. Consequently, appeal papers to be filed.

(R.S. MOHITE, J.)